

FEDERAL MAIL SECTION

Before the
Federal Communications Commission
Washington, D.C. 20554

SEP 14 11 51 PM '00

In the Matter of

Implementation of the Subscriber Carrier
Selection Changes Provisions of the
Telecommunications Act of 1996

Broadwing Local Services Inc.
Petition for Waiver

CC Docket No. 94-129

ORDER**Adopted: September 8, 2000****Released: September 11, 2000**

By the Associate Chief, Accounting Policy Division, Common Carrier Bureau:

I. INTRODUCTION AND BACKGROUND

1. In its *Carrier Change Orders*,¹ the Commission adopted rules applicable to carriers changing a consumer's preferred carrier.² In this Order, we grant Broadwing Local Services Inc. (Broadwing Local) a limited waiver of the authorization and verification requirements of the Commission's rules and *Carrier Change Orders*.³ We grant this limited

¹ *Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996 and Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers*, CC Docket No. 94-129, Further Notice of Proposed Rule Making and Memorandum Opinion and Order on Reconsideration, 12 FCC Rcd 10674 (1997), Second Report and Order and Further Notice of Proposed Rule Making, 14 FCC Rcd 1508 (1998) (*Section 258 Order*); *stayed in part*, *MCI WorldCom v. FCC*, No. 99-1125 (D.C. Cir. May 18, 1999); *First Order on Reconsideration*, FCC 00-135 (released May 3, 2000), 65 Fed. Reg. 47678 (August 3, 2000); *stay lifted*, *MCI WorldCom v. FCC*, No. 99-1125 (D.C. Cir. June 27, 2000); Third Report and Order and Second Order on Reconsideration, FCC 00-255 (released August 15, 2000); *reconsideration pending*; *Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers*, CC Docket No. 94-129, Report and Order, 10 FCC Rcd 9560 (1995), *stayed in part*, 11 FCC Rcd 856 (1995); *Policies and Rules Concerning Changing Long Distance Carriers*, CC Docket No. 91-64, 7 FCC Rcd 1038 (1992), *reconsideration denied*, 8 FCC Rcd 3215 (1993) (*PIC Change Recon. Order*); Investigation of Access and Divestiture Related Tariffs, CC Docket No. 83-1145, Phase I, 101 F.C.C.2d 911 (*Allocation Order*), 101 F.C.C.2d 935 (*Waiver Order*), *reconsideration denied*, 102 F.C.C.2d 503 (1985) (*Reconsideration Order*) (the *Reconsideration Order* denied reconsideration of both the *Allocation Order* and the *Waiver Order*). We refer to these orders collectively as the *Carrier Change Orders*.

² 47 C.F.R. §§ 64.1100 - 64.1190.

³ On August 17, 2000, Broadwing Local filed a Petition for Waiver of the Commission's rules relating to Broadwing Local's acquisition of the local exchange customer base of Cincinnati Bell Long Distance Inc. (CBLD) (Waiver Petition).

waiver to the extent necessary to enable Broadwing Local to become the preferred carrier of the consumers currently presubscribed to CBLD, without first obtaining the consumers' authorization and verification.

2. Section 258 of the Communications Act of 1934, as amended by the Telecommunications Act of 1996, makes it unlawful for any telecommunications carrier to "submit or execute a change in a subscriber's selection of a provider of telephone exchange service or telephone toll service except in accordance with such procedures as the Commission shall prescribe."⁴ The goal of section 258 is to eliminate the practice of "slamming," the unauthorized change of a subscriber's preferred carrier. Pursuant to section 258, carriers are absolutely barred from changing a customer's preferred local or long distance carrier without first complying with the Commission's verification procedures.⁵ In the *Section 258 Order*, the Commission revised its procedures to ensure that carriers obtain the requisite authority prior to changing a customer's preferred carrier. The Commission requires that carriers follow one of the Commission's prescribed verification procedures before submitting carrier changes on behalf of consumers.⁶

3. Broadwing Local seeks a waiver of our verification rules to allow Broadwing Local to be designated the preferred local exchange carrier for the customers of CBLD without first obtaining each customer's authorization and verification. Because we conclude that, under the circumstances presented, it is in the public interest to grant the waiver, we grant Broadwing Local a waiver, subject to the conditions represented in its filings.

II. DISCUSSION

4. Generally, the Commission's rules may be waived for good cause shown.⁷ As noted by the Court of Appeals for the D.C. Circuit, however, agency rules are presumed valid.⁸ The Commission may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest.⁹ In addition, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on

⁴ 47 U.S.C. § 258.

⁵ The Commission's rules and orders clearly contemplate that a switchless reseller may be a customer's preferred carrier. Therefore, changes to a customer's preferred carrier that do not involve a change in the customer's underlying facilities-based carrier are nonetheless subject to the Commission's authorization and verification rules. See *Section 258 Order* at paras. 145-146; *WATS International Corp. v. Group Long Distance (USA), Inc.*, 12 FCC Rcd 1743, 1752 (1997) (citing *PIC Change Recon. Order*, 8 FCC Rcd at 3218).

⁶ Pursuant to these procedures, a carrier must: (1) obtain the subscriber's written authorization; (2) obtain confirmation from the subscriber via a toll-free number provided exclusively for the purpose of confirming orders electronically; or (3) utilize an independent third party to verify the subscriber's order. See 47 C.F.R. § 64.1150.

⁷ 47 C.F.R. § 1.3.

⁸ *WAT Radio v. FCC*, 418 F.2d 1153, 1157 (D.C. Cir. 1969), cert. denied, 409 U.S. 1027 (1972).

⁹ *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

an individual basis.¹⁰ Waiver of the Commission's rules is therefore appropriate only if special circumstances warrant a deviation from the general rule, and such a deviation will serve the public interest.¹¹

5. We find that Broadwing Local has demonstrated that good cause exists to justify a limited waiver of the Commission's authorization and verification requirements to the extent necessary to enable Broadwing Local to transfer to its own customer base the affected CBLD customers. In the Waiver Petition, Broadwing Local states that both CBLD and itself are providers of local exchange service and subsidiaries of the same holding company, Broadwing Inc. (formerly Cincinnati Bell Inc.). CBLD provides resale local exchange service in Ohio, Kentucky, and Indiana. Broadwing Local has applied for certification to provide local exchange service in each state where CBLD currently provides service. Upon receipt of the necessary regulatory approvals, Broadwing Inc. intends to consolidate into Broadwing Local its local exchange carrier operations, including the approximately 6,000 customers that constitute CBLD's current resale local exchange customer base.¹² Upon discontinuance of service by CBLD, Broadwing Local will provide local exchange service on a presubscription basis to the former customers of CBLD.

6. We conclude that special circumstances exist to justify a waiver. Without this waiver, the service of some former CBLD customers might temporarily be interrupted when CBLD ceases providing presubscribed service to customers who fail to respond in a timely fashion to requests for preferred carrier change authorization. We conclude that a waiver of the Commission's carrier change rules and orders is necessary to provide a seamless transition with no disruption of service to the transferred customers.

7. We find that Broadwing Local has demonstrated that a limited waiver of the authorization and verification rules is in the public interest because it will prevent consumers from temporarily losing service, and because Broadwing Local has agreed to notify the affected customers as described below. Broadwing Local states that it will undertake a two-step process to notify the affected customers of the transfer. In a first letter, Broadwing Local will inform customers of the proposed transfer and assure them that no charges or rate increases will be imposed as a result of the transfer.¹³ Broadwing Local states that it will also advise the affected customers that they can choose a different preferred local exchange carrier, should they desire to do so.¹⁴ In addition, customers will be given a toll-free number to call with any questions they may have about the transition. According to Broadwing Local, once the proposed transfer has

¹⁰ *WAIT Radio*, 418 F.2d at 1157.

¹¹ *WAIT Radio*, 418 F.2d at 1159; *Northeast Cellular*, 897 F.2d at 1166.

¹² Waiver Petition at 1-2.

¹³ Broadwing Local filed sample notification letters. See Waiver Petition, Exhibits 1 and 2 (Notification Letters); Waiver Petition at 2.

¹⁴ Waiver Petition at 2.

been consummated, Broadwing Local will notify these customers of that event and reiterate the foregoing information, assurances, and advice.¹⁵ We conclude that these conditions will adequately protect the rights of the transferred customers of CBLD.¹⁶

8. For the foregoing reasons, we grant Broadwing Local a waiver of the authorization and verification requirements of our rules for the limited purposes described above. The grant of this waiver is conditioned upon Broadwing Local's provision of customer notification, as described above and further detailed in the Waiver Petition.

III. ORDERING CLAUSES

9. Accordingly, pursuant to authority contained in Sections 1, 4, and 258 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154, 258, and the authority delegated under sections 0.91, 0.291, and 1.3 of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, 1.3, the waiver request filed by Broadwing Local Services Inc. on August 17, 2000, IS GRANTED to the extent indicated herein.

10. IT IS FURTHER ORDERED that this Order is effective upon release.

FEDERAL COMMUNICATIONS COMMISSION

K. Michele Walters

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Associate Chief,
Accounting Policy Division,
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¹⁵ Notification Letters; Waiver Petition at 3.

¹⁶ In addition, we note that Broadwing Local has agreed to resolve any customer complaints that may result from the transfer or that may be brought against CBLD in its capacity as a local exchange service provider. See Waiver Petition at 2.